

LONGER WORKING AND HUMAN RIGHTS

Colm O’Cinneide
Professor of Law
UCL

THE CONTEXT

- A 'greying' European and global population. (DoH 2016: number of over-65s increases by almost 20,000 a year; Census 2016: average age increasing by more than a year to 37.4; IPH, 2016: by 2041, there will be 2.44 million aged 60 and over living on the island of Ireland, making up nearly one third of its total population.)
- Changing nature of the economy, which has a complex impact on different age cohorts – e.g. fewer jobs requiring physical labour, more jobs requiring IT skills.
- Greater social expectations that individual self-realisation through work will continue throughout life (DoH 2016: employment rate for adults aged 50-64 has increased 2014-2016, 58% to 63%. 19% of 65-69s still in employment in 2016 (9.7% of 70-74s): notably above EU average.)
- Increasing challenges to, and conscious of, stereotyping based on age. (DoH 2016: 45% of adults aged 50+ reported they felt discriminated against because of their age in the past 2 years.)

Ageing and Human Rights

- It is rare for age discrimination to be explicitly acknowledged as a ‘wrong’ within human rights texts – at national or international level. Courts have also been reluctant to treat age as a ‘suspect’ ground of discrimination: see e.g. the Irish Supreme Court judgment in the Article 26 reference of the Employment Equality Bill 1996.
- Rights of older workers thus usually derived from general labour, equality and social rights guarantees.
- But see Article 21 of the EU Charter of Fundamental Rights, where age is included in that provision’s long list of non-discrimination grounds. See also Articles 1§2, 23 and 24 of the European Social Charter.
- Note also the recent moves at UN level to draw up a treaty on the human rights of older persons – the ‘Chung Report’ of 2010, and the ongoing proceedings of the UN Open-ended Working Group on Ageing established by General Assembly Resolution 65/182 in December 2010.

The Legislative Prohibition on Age Discrimination

- The first mover – the US Age Discrimination in Employment Act 1967 (ADEA), prohibiting discrimination against the over 40s. (Mandatory retirement ages abolished in 1986.)
- Ireland first European country to enact a comprehensive ban on age discrimination via the EEAs 1999-2015 and ESAs 2000-2015, covering both younger and older workers.
- EU-wide prohibition on age discrimination in employment introduced via Article 6 of Directive 2000/78/EC in 2000, recognised to be an expression of the ‘general principle of equal treatment’ by the CJEU in C-144/04, *Mangold v Helm*, [2005] ECR I-9981.
- There now exists an extensive case-law on age discrimination, both before the Irish courts/ETs/WRC and at EU level in the CJEU.

Key Features of the Legislative Prohibition

- Unusually, both direct and indirect discrimination on grounds of age can be objectively justified in line with EU law.
- See S. 34(4) EEA on retirement ages, which must be objectively justified (since 2015 now in line with EU requirements); s. 34(5) on maximum recruitment ages to get an adequate return on training; s. 34(3) on age limits in respect of access to/benefits from occupational pension schemes, including redundancy; s. 6(3)(b) allowing employers to fix a minimum recruitment age (18) and S. 6(3)(c) on fixed term contracts for employees older than a relevant retirement age.
- Sample case-law: *Equality Authority v. Ryanair* [2001] E.L.R 107 (ageist advert); *O'Farrell v Mercury Engineering*, DEC-E2012-096, 24.07.2012 (redundancy selection based on age); *Doyle v ESB International*, DEC-E2012-086 (retirement ages), *Flynn v Se Quirk Limited*, UD295/2015, May 2016 (unfair dismissal); *Hospira v Roper*, EDA 1315, 29.04.2013 (redundancy).

Breaking News...

RTÉ News Sport Entertainment Business Lifestyle Culture Player TV Radio More Weather 8°C

News > Ireland | World Business Sport Nuacht Programmes

Solas employee awarded €20k in age discrimination case

Updated / Thursday, 25 Jan 2018 19:14

[f](#)
[t](#)
[in](#)
[m](#)
[p](#)

TEACH LANSQUIN LANSDOWNE HOUSE WRC

WRC
An Chúirt Oibreachais
An Coimisiún um
Chaidreamh san Áit Oibre
Labour Court
Workplace Relations
Commission

The Workplace Relations Commission criticised Solas for failing to take a complaint of ageism seriously

By **Emma O Kelly**
Education Correspondent

The State's further education and training authority, Solas, has been ordered

Taskbar: Solas employee a..., O' Cinnide General, HDUpgrade_panel..., O' Cinnide age di..., O' Cinnide age.p..., O' Cinnide ULB s..., WRC Conference...

Beyond Existing Law

- Blackham, *Extending Working Life for Older Workers*, 2016: UK age discrimination law has had limited impact, there is a need for law reform, more proactive measures (including age-specific positive action and employer incentivisation) and effective leadership going forward.
- For other perspectives, see Macnicol, 2015 (positive action to redress ‘compulsory work’ and the growing poverty risk for under-skilled older workers); Loretto et al, 2016 (training and proactive management strategies); the various ILO initiatives on ageing and older workers.
- Note also the intersectional dimension: action on gender equality, carers, family status etc will impact on the employability of older workers.
- Finally, return again to the developing human rights agenda in respect of older persons – the ‘next frontier’?